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CENTRAL INTELLIGENCE AGENCY
Office of Legislative Counsel
Washington, D. C. 20505
Telephone: [redacted]

13 February 1978

TO: Mr. Ralph Preston, Staff Assistant
Subcommittee on Defense
House Appropriations Committee

Dear Ralph:

Enclosed is material in response to your request on behalf of Representative Chappell. It includes background information which I thought would be of interest. Also included is the draft bill submission which I referred to which became a matter of public record in the Knopf case and you will find it included as an addendum item at page 28.

As you know, none of this represents an Administration position. Let me know if we can be of any further help.

Sincerely,

STAT

Encls.

Acting Legislative Counsel

FORM 6-68 1533 OBSOLETE PREVIOUS EDITIONS

(40)

BACKGROUND INFORMATION RELATING TO LEGISLATION THAT WOULD PROTECT AGAINST THE UNAUTHORIZED DISCLOSURE OF INTELLIGENCE SOURCES AND METHODS AND CLASSIFIED INFORMATION

Attached are the following papers providing background on legislation relating to protection against the unauthorized disclosure of intelligence sources and methods and classified information:

1. The current situation regarding the Government's ability to protect against the unauthorized disclosure of intelligence sources and methods and classified information.

2. A summary of H.R. 12006 introduced on 19 February 1976.

3. A summary of H.R. 6057 introduced on 5 April 1977.

4. A summary of H.R. 6234 introduced on 6 April 1977.

5. A listing of various statutes providing criminal sanctions for the disclosure of certain types or categories of Government information.

6. A Washington Post editorial of 23 February 1976 entitled "The President's Secrecy Legislation" and a letter to the Washington Post from Philip Agee appearing in the same issue.

PROTECTION OF INTELLIGENCE SOURCES AND METHODS

Over the years, serious damage to our foreign intelligence effort has resulted from the unauthorized disclosure of information related to intelligence sources and methods. In most cases the sources of these leaks have been individuals who acquired access to sensitive information by virtue of a relationship of trust with the U.S. Government. Current criminal law protecting national security or national defense information, however, is for practical purposes limited to two general and three more restricted statutes. These are the basic espionage statutes (18 U.S.C. 793 and 794); and 18 U.S.C. 798 which protects classified communications information, 42 U.S.C. 2274 and 2275 protecting Restricted Data, and 50 U.S.C. 783(b) which covers passage of classified information by an officer or employee of the Government to any person that the officer or employee has reason to believe is a representative of a foreign power. None of these criminal statutes, either individually or in combination, provides adequate or effective protection for intelligence information or intelligence sources and methods. In most instances the Government must prove an intent to harm the United States or an intent to aid a foreign power. In fact, the evidence required to establish such an element of the offense may very well require revelation of additional sensitive information in open court or, at the very least, the further dissemination and confirmation of the information which is the subject of the prosecution. The obvious danger that additional damage would result from such further disclosure--a risk the Government is usually unwilling to incur--has resulted in a serious weakening of the deterrent aspects of existing law.

The statutory responsibility charged to the Director of Central Intelligence for protecting intelligence sources and methods from unauthorized disclosure is set forth in section 102(d)(3) of the National Security Act of 1947, as amended; there are, however, no criminal sanctions in aid of enforcing this responsibility. Congressional recognition of the need to implement the Director's statutory responsibility is reflected only in the enactment of a number of special authorities for the Agency and a number of exemptions from the disclosure requirements of other laws having general applicability throughout the Government.

In civil actions the Government was successful in the Marchetti case in obtaining a civil injunction against publication of sensitive intelligence sources and methods based on contract theory. In other words, protection against disclosure of sensitive intelligence sources and methods was predicated on a secrecy agreement executed by a former Government employee as a condition of employment with the Government. Such procedures, however, are of extremely limited utility to the Government, since initiation of an injunctive action would depend on prior knowledge of an intended disclosure, discovery of which would not only be extremely difficult but efforts on the part of the Government to obtain such prior knowledge would themselves be of questionable propriety.

Even though there are no statutes that protect, by way of criminal sanctions against the unauthorized disclosure of sensitive intelligence information and sources and methods, there are a wide variety of laws which protect against disclosure of other categories of Government information. These include statutes that provide criminal penalties against Government employees: who publish or communicate Department of Agriculture information; who fail to observe confidentiality of Department of Agriculture marketing agreement information; or who publish or communicate Department of Commerce information, diplomatic code material, Government crop information, confidential business information, information relating to loans and borrowers, or tax information.

Bills have been introduced in the Congress that would establish criminal penalties for the unauthorized disclosure of intelligence sources and methods or classified information, but to date none have been fully addressed; the most recent of these include H.R. 12006 introduced in February 1976, H.R. 6057 introduced in April 1977 and H.R. 6234 (which parallels H.R. 12006) introduced in April 1977.

SUMMARY OF H.R. 12006, INTRODUCED BY REPRESENTATIVE MCCLORY ON 19 FEBRUARY 1976 PARALLELING THE PROPOSAL TO THE CONGRESS SUBMITTED BY FORMER PRESIDENT FORD ON 18 FEBRUARY 1976 TO PROTECT INTELLIGENCE SOURCES AND METHODS FROM UNAUTHORIZED DISCLOSURE

The major provisions of H.R. 12006 are:

--define the various types of intelligence sources and methods to be protected;

--impose a criminal penalty of five years and/or $5,000 fine on any individual who has been entrusted with the information and who had knowingly disclosed that information to a person not authorized to receive it;

--the provision is specifically limited to those Federal employees, former employees, or others having a similar privity of relationship with the information disclosed;

--the bill would not apply to outside third parties, such as the press, to whom the unauthorized disclosure had been made;

--bars to prosecution would include the non-existence of a review procedure whereby the defendant could have obtained review of the material to determine the necessity for continued protection, failure of the Attorney General and the DCI to certify that the information was lawfully classified and lawfully designated as requiring protection, the information already had been placed in the public domain by the Government, the information was not lawfully classified and designated as requiring protection at the time of the offense, and classified information was communicated only to the Congress pursuant to lawful demands;

--the court would hold an in camera review to determine whether the information was in fact lawfully classified and designated;

--there would be provision made for the DCI to seek, through the Attorney General, injunctive relief.

H.R. 6057 -- Unauthorized Disclosure of Classified Information

1. Introduced 5 April 1977 by Representative Robin Beard (R., Tenn.).

2. Referred to Judiciary; no action scheduled.

3. Would amend Title 18, U.S. Code, by adding a new section 800 entitled "Disclosure of Classified Information."

a. The class of persons covered encompasses only persons who are or have been Federal employees, officers, consultants, or contractors, who are or had been in authorized possession or control of confidential or secret information, and who knowingly communicate such information to a person or persons not authorized to receive it.

(1) The penalty for unauthorized disclosure of secret information is double that for confidential information.

b. The recipient of such unauthorized information shall not be prosecuted.

c. The following are defenses to prosecution under the bill: absence of proper classification and review authority; the defendant exhausted available procedures to obtain declassification; the information was not properly classified; the DCI and the Attorney General failed to certify the information as properly classified; the information was previously disclosed publicly and officially; and the information was communicated to the Congress.

d. The bill provides for de novo determination by the court as to whether the information was properly classified; the court may examine the material in camera.

e. The definition of "classified information" is limited to information designated under an Executive order as requiring protection.

SUMMARY OF H.R. 6234, INTRODUCED BY
REPRESENTATIVE ASHBROOK IN APRIL 1977

The major provisions of H.R. 6234 are:

--define the various types of intelligence sources and methods to be protected;

--impose a criminal penalty of five years and/or $5,000 fine on any individual who has been entrusted with the information and who had knowingly disclosed that information to a person not authorized to receive it;

--the provision is specifically limited to those Federal employees, former employees, or others having a similar privity of relationship with the information disclosed;

--the bill would not apply to outside third parties, such as the press, to whom the unauthorized disclosure had been made;

--bars to prosecution would include the non-existence of a review procedure whereby the defendant could have obtained review of the material to determine the necessity for continued protection, failure of the Attorney General and the DCI to certify that the information was lawfully classified and lawfully designated as requiring protection, the information already had been placed in the public domain by the Government, the information was not lawfully classified and designated as requiring protection at the time of the offense, and classified information was communicated only to the Congress pursuant to lawful demands;

--the court would hold an in camera review to determine whether the information was in fact lawfully classified and designated;

--there would be provision made for the DCI to seek, through the Attorney General, injunctive relief.

November 1975

CRIMINAL SANCTION FOR THE DISCLOSURE OF CERTAIN INFORMATION

The United States Congress has from time to time recognized that there exist various categories of information which must be handled only within authorized channels. In order to protect such information, various statutes have been enacted imposing criminal penalties for unauthorized disclosure. These statutes make clear the official policy of safeguarding certain information and act as a deterrent to those who would be tempted to disregard that policy by putting their own interest before the valid interests to be protected.

The statutes imposing criminal penalties have several different objectives. Many of them impose the penalty on the individual--typically the Government employee--in whom the information is entrusted. Others subject all individuals to the penalties. Typical of those that subject the Government employee to the penalty are:

7 U.S.C. 472	- Department of Agriculture employees who publish or communicate any information given into their possession by reason of their employment shall be guilty of a misdemeanor - $1,000, 1 year
7 U.S.C. 608d	- Department of Agriculture employees who fail to observe confidentiality of marketing agreement information - $1,000, 1 year
13 U.S.C. 214	- Department of Commerce employees who publish or communicate information coming into their possession by reason of their employment - $1,000, 2 years
18 U.S.C. 952	- U.S. Government employees who publish or furnish diplomatic code material (either domestic or foreign code material) who have access or possession by virtue of their employment - $10,000, 10 years

18 U.S.C. 1902 - U.S. Government employees who willfully impart crop information having the information by virtue of their office - $10,000, 10 years

18 U.S.C. 1905 - U.S. Government employees who disclose confidential business information coming into their possession in the course of their employment - $1,000, 1 year

18 U.S.C. 1906 - Bank examiners who disclose loan information - $5,000, 1 year

18 U.S.C. 1907 - Examiners who disclose names of borrowers from land bank - $5,000, 1 year

18 U.S.C. 1908 - Examiners under National Agricultural Credit Corporations law who disclose names of borrowers - $5,000, 1 year

18 U.S.C. 1917 - Civil Service Commission employees who make unauthorized disclosure of certain information regarding civil service examinations - $1,000, 1 year

26 U.S.C. 7213 - U.S. Government employees and others who divulge income tax return information - $1,000, 1 year, costs

42 U.S.C. 1306 - Department of Health, Education and Welfare employees who disclose tax return information - $1,000, 1 year

50 U.S.C. 783 - U.S. Government employee who communicates classified information to foreign government - $10,000, 10 years

50 U.S.C. App. 2406 - Officials performing functions under the Export Administration Act of 1969 who publish or disclose confidential information - $10,000, 1 year

50 U.S.C. App. 2160 - U.S. Government employees who disclose information for commodity speculation - $10,000, 1 year

18 U.S.C. 1906 and 1907 apply to private as well as public bank examiners. One statute specifically subjects a class of private individuals as follows:

49 U.S.C. 15	- Employees of a common carrier who disclose shipping information -- $1,000

Other statutes make all individuals subject to criminal penalties as follows:

7 U.S.C. 135a & f	- Unlawful to use for own advantage or reveal formulas for insecticides -- $1,000, 1 year
18 U.S.C. 605	- Disclosure, for political purposes, of names of persons on relief -- $1,000, 1 year
18 U.S.C. 793	- Obtaining, copying, communicating national defense information -- $10,000, 10 years
18 U.S.C. 794	- Gathering or delivering defense information to aid foreign governments -- death or term
18 U.S.C. 798	- Disclosure of certain classified information prejudicial to U.S. -- $10,000, 10 years
35 U.S.C. 186	- Willfully disclosing or publishing patent information -- $10,000, 2 years
50 U.S.C. App. 327	- Unlawful use of Selective Service records -- $10,000, 5 years
50 U.S.C. App. 1152	- Unauthorized disclosure of certain information regarding acquisition of vessels -- $1,000, 2 years or $10,000, 1 year

It is important to note that 44 U.S.C. 3508 states, in part, that:

> In the event that any information obtained in confidence by a Federal agency is released by that agency to another Federal agency, all the provisions of law (including penalties) which relate to the unlawful disclosure of any

> such information shall apply to the officers and employees of the agency to which such information is released to the same extent and in the same manner as such provisions apply to the officers and employees of the agency which originally obtained such information; and the officers and employees of the agency to which the information is released shall in addition be subject to the same provisions of law (including penalties) relating to the unlawful disclosure of such information as if the information had been collected directly by such agency.

This provision of law was originally codified as 5 U.S.C. 1396 but was later moved to Title 44. Apparently there is no case law interpreting the provision.

Several of the provisions mentioned above are changed in the proposed Criminal Justice Reform Act of 1975 (S.1). In many cases the Act merely changes the severity of the punishment. The specific criminal penalty is removed from 7 U.S.C. 472. Coverage is afforded in the proposed 18 U.S.C. 1524 which provides criminal sanctions for public servants or former public servants who reveal private information submitted for a Government purpose. This proposed section also provides protection now afforded in 18 U.S.C. 1905. 50 U.S.C. 2160 will be repealed under S.1. In its place will be 18 U.S.C. 1356 which provides criminal sanctions for public servants or former public servants who speculate on official governmental action or information. 18 U.S.C. 605 will be deleted, 18 U.S.C. 1906 and 1907 will be moved to Title 12, 18 U.S.C. 1908 will be deleted, and 18 U.S.C. 1917 will be moved to Title 5 under S.1.

employees of the agency to which such information is released to the same extent and in the same manner as such provisions apply to the officers and employees of the agency which originally obtained such information; and the officers and employees of the agency to which the information is released shall in addition be subject to the same provisions of law (including penalties) relating to the unlawful disclosure of such information as if the information had been collected directly by such agency.

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The President's Secrecy Legislation

IF YOU AGREE with Philip Agee, whose letter appears on this page today, you will find the reforms of the Central Intelligence Agency and the secrecy legislation proposed by President Ford wholly inadequate. Mr. Agee —and some others—believe the CIA is an organization whose agents and activities should be publicly identified and exposed because, in their view, its operations are wholly inimical to our true national interest. On the other hand, if you believe, as we do, that there is a place in this imperfect world for secret government activities—as long as they are properly directed and controlled—you may find the President's proposals a reasonable starting point. We have already expressed some views on those reorganization proposals. Today we intend to focus on the details of the President's secrecy legislation which is aimed—rather precisely—at people like Mr. Agee.

The secrecy legislation, as we understand it (it is printed on the opposite page so that you can judge for yourself how narrowly it is drawn) attempts to deter or discourage leaks of information relating only to the *sources and methods* of collecting foreign intelligence and the *methods and techniques* used to evaluate it. It is not a proposal to create an Official Secrets Act (which would punish anyone for revealing any government secrets) or, even, to protect the general run of secret intelligence information, as Mr. Ford seemed to suggest in his press conference. It is not, for example, directed at the *content* of foreign intelligence or information that relates to past or future government policies (except as the publication of a specific piece of intelligence might, by itself, reveal the method by which the information was obtained). Thus, it does not appear to cover such material as the nation's negotiating position on the SALT talks or most of the contents of the Pentagon Papers. It would cover, however, such information as the names of CIA officers and agents, the ways in which they gather information, and such techniques as the use of submarines for intelligence purposes. As fascinating as this kind of information is, it is information we think the government has a legitimate need and, as far as secret agents are concerned, a moral obligation to keep secret. The public identification of such an agent, as in the case of Richard Welch, not only destroys his effectiveness but also may endanger his life. This is a point which Mr. Agee disputes in his letter but which he seems to concede tacitly by suggesting that Mr. Welch should have come in from the cold once his cover was blown. In any case, in a democratic system there is a better way, we think, to work out one's antipathy toward CIA operatives, and that is for Congress to bring them home by outlawing their activities and/or refusing to vote the necessary funds.

In many ways, President Ford's proposal can be regarded as the modernization of a law that went on the books 25 years ago to protect the government's cryptographic and communication intelligence activities. That law made it a crime for anyone—in or out of the government—knowingly to communicate to unauthorized persons any information concerning codes, ciphers and methods of intercepting communications and analyzing them. Mr. Ford's proposal puts other ways of gathering intelligence on an equal footing with code-breaking and communications interception, but with some differences. The most important of these is that Mr. Ford does not propose to try to punish private citizens, such as journalists, who have no relationship with government, for revealing this kind of information; the old code statute does.

Once this much is said about the general thrust of Mr. Ford's secrecy legislation, some specific problems need to be recognized. One is that, while agencies like the CIA need to protect legitimate sources and methods, they should not be able to hide illegitimate secrets under so stringent a secrecy statute. Missing from the President's proposal is anything to make legal, indeed to encourage, low level personnel's revealing information concerning illegal or unauthorized activities, such as some of those undertaken by the CIA in the past. Congress should put such a provision into the statute and, to make it workable, spell out in more detail than does the new executive order, what the limits are to be on intelligence-gathering methods.

A second troublesome area that the proposed legislation does not address is the old bureaucratic trick of placing a small amount of highly classified material in a document made up mostly of unclassifiable but embarrassing information—and giving the whole package the highest classification. That can perhaps be best handled in terms of this statute by broadening the scope of judicial review of the legitimacy of the classification of the specific information that was or is about to be revealed. Similarly, Congress needs to broaden somewhat, and clarify, the part of this proposal that says revelation of information already in the public domain cannot be punished.

Unlike most other secrecy statutes that have been proposed in recent years or adopted in the past, the President's version, if modified as we have suggested, would balance reasonably well the conflicting needs for some secrecy and much freedom of information. It is sharply limited in the kind of information that can be kept secret and it avoids First Amendment problems by placing its barriers on those who chose in the first place to engage in secret work. There may come a time in the history of the world when distrust and aggression among nations diminish so much that the need for government secrecy will disappear. But that time is not yet. And until it arrives, the government can quite properly take stringent steps to protect at least the sources and methods by which it learns what is going on elsewhere in the world.

Oct 76

WASHINGTON POST

Philip Agee on Exposing CIA Agents

23 FEB 1976

The Washington Post's indignant accusation that I or others engaged in exposing the CIA were responsible for the death of Richard Welch suffers the inadequacies of many a first, emotional response.

There was no "invitation to kill him" nor was his death inevitable once he had been identified. In my view his identification, as well as all the others, should be taken as an invitation to return to Langley. No harm will occur there.

By what right does the CIA promote political repression and subvert the institutions of other countries in the first place? That personal accountability of government officials found so lacking during Vietnam and Watergate is no less required of CIA people. But as long as they operate with impunity under cover, their accountability will be restricted to bureaucratic channels subject to the same cover-ups that have dominated the Rockefeller Commission's report and the reports of the congressional committees.

No one can deny the family tragedy. But what about the other families whose members have been lost to the CIA-supported security services in South Korea, Indonesia, Iran, Brazil, Chile? Need Greece be mentioned? The Post is concerned with "extra-legal punishment" of Welch who was "accused of no crime" but where is The Post's call for details of his work and others' that would provoke such violence? Did The Post call for "congressional processes of review" of the CIA's work in Greece? Does The Post for one minute think Congress or any other reviewing authority would dare investigate the CIA's work with the security services of these countries in the interests of "freedom, democracy and national security"?

The CIA is a secret political police that protects the interests of The Washington Post's owners and those of every other American company. The Agency's operations in Chile were necessary, as they were in Greece and many other countries, given the traditional definition of American national interests. Until fundamental change comes within the United States, political repression will continue to be the work of Mr. Welch's colleagues. We ought to know who they are.

PHILIP AGEE.

Cambridge, England.

The writer is the author of the recently published book, "Inside the Company—A CIA Diary."

(See editorial)

Nos. 74-1478, 74-1479

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

ALFRED A. KNOPF, INC., et al.,

Appellants-Cross-Appellees,

v.

WILLIAM COLBY, et al.,

Appellees-Cross-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

REPLY BRIEF FOR APPELLEES-CROSS-APPELLANTS

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